

LEVI T. BELLAH

IBLA 75-514

Decided September 4, 1975

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying lessee's petition for reinstatement of terminated oil and gas lease (M 24693-D).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Reinstatement: Generally

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The fact the courtesy rental notice did not come to the attention of the lessee until six days after the rental due date is not a justifiable excuse for late payment of the rental.

APPEARANCES: Levi T. Bellah, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal is taken from an April 28, 1975, decision of the Montana State Office, Bureau of Land Management (BLM), denying appellant's petition for reinstatement of his noncompetitive oil and gas lease.

The subject lease expired by operation of law on its anniversary date, April 1, 1975, when the lessee failed to submit the annual rental for the lease to the BLM by that date. Subsequently, on April 11, 1975, the lessee's payment in the amount of the rental was received by the State Office. The payment arrived in an envelope bearing the postmark: "ATLANTA, GA 300, PM, 8 APR, 1975."

Appellant contends that the notice of rental payment due was not received by him until April 7, 1975, (appellant's initial petition indicated that he "did not see the notice until 4-7-75") and that his contract did not state that "he would not be notified when payments are due." Appellant alleges that he relied upon receiving the notice of rental payment due and that his failure to see the notice until six days after the rental due date was the cause of the late payment. 1/

[1] If the rental for a federal oil and gas lease on which there is no well capable of producing oil or gas in paying quantities is not paid on or before the anniversary date of the lease, the lease shall terminate automatically by operation of law. 30 U.S.C. § 188(b) (1970). Relief from such automatic termination may be granted by reinstating the lease. However, a lease may not be reinstated unless the lessee shows " * * * to the satisfaction of the Secretary of the Interior that such failure [to make timely payment of rental] was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * * ." Section 2 of the Act of May 12, 1970, 30 U.S.C. § 188(c) (1970).

The issue raised by this appeal is whether the circumstances alleged by appellant in support of the petition for reinstatement establish reasonable diligence on his part or justifiable cause for the late payment.

There was not reasonable diligence in this case because the payment was transmitted after the anniversary date. Reasonable diligence is ordinarily found where the rental payment is sent or delivered sufficiently in advance of the anniversary date to allow for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2); Louis Samuel, 8 IBLA 268, 272-273 (1972).

Likewise, appellant's explanation for the late payment is not a justifiable excuse for the delay. The Department is under no obligation to provide lessees with the courtesy notice of rental payment due referred to in appellant's petition. Louis J. Patla, 10 IBLA 127, 128 (1973). Reliance upon receipt of the courtesy notice will neither prevent termination of the lease by operation of law nor justify a failure to make timely rental payment. Louis J. Patla, supra at 128. This is true even if the

1/ Appellant also complains of ignorance of the statute providing for automatic termination of nonproductive oil and gas leases in the event of failure to make timely payment of the rental. 30 U.S.C. § 188(b) (1970). Ignorance of the law and regulations will not make a late payment of rental justifiable. Louis Samuel, 8 IBLA 268, 274 (1972).

notice is delayed in transit to the lessee as well as where it is never received at all. Kenneth F. Santor, 13 IBLA 208, 211 (1973).

Therefore, appellant's excuse that the courtesy rental due notice did not come to his attention until six days after the rental due date is not a justifiable cause for making the payment late. Denial of lessee's petition for reinstatement was proper.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge

